



Department of Justice

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STATEMENT

BY

ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

BEFORE THE

SENATE COMMITTEE ON THE JUDICIARY

ON

S. 1564, A BILL TO ENFORCE THE FIFTEENTH AMENDMENT
TO THE CONSTITUTION OF THE UNITED STATES

TUESDAY, MARCH 23, 1965

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE,

I am pleased to appear here today to testify in favor of S. 1564, "The Voting Rights Act of 1965." This bill represents an attempt to effectuate the most central and basic right of our political system.

Any society composed both of freemen and those who are not free cannot be a true democracy. Thus with the passage of the Thirteenth Amendment, ending slavery, this Country took a giant step toward this great goal.

But until all the members of our society are afforded an effective opportunity to participate in its political processes--that is, to cast a ballot freely--the promise of democracy remains unfulfilled.

Beginning in 1956 Congress attempted to meet this problem. Since that year three Presidents have asked Congress for additional legislation to guarantee the constitutional right to vote without discrimination on account of race or color.

Three times in the last decade--in 1956, in 1960 and in 1964--those who oppose stronger federal legislation concerning the electoral process have asked Congress to be patient; and Congress has been patient. Three times since 1956 they have said that local officials, subject to judicial direction, will solve the voting problem. And each time Congress has left the problem largely to the courts and the local officials. Three times since 1956 they have told us that this prescription would provide the entire cure--this prescription aided by time--and Congress has followed that advice.

But while the legislative process of the Congress should be deliberate, while comprehensive laws should be enacted only after all the facts are in, and while reasonable alternatives to broader federal control of elections should, of course, be attempted first, there comes a time when the facts are all in, the alternatives have been tried and found wanting, and time has run out. We stand at that point today.

As President Johnson so simply and eloquently said in his message to the Congress last week:

"Many of the issues of civil rights are complex and difficult. But about this there can be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty to ensure that right."

Nearly one hundred years ago the ratification of the Fifteenth Amendment promised Negro Americans an equal right to vote and authorized Congress to enact legislation to carry out the promise. In the words of the late Mr. Justice Frankfurter, speaking for the Court in Lane v. Wilson, 307 U.S. 268, 275 (1939), the framers intended the Amendment to "reach . . . contrivances by a state to thwart equality in the enjoyment of the right to vote . . . regardless of race or color." The Amendment thus "nullifies sophisticated as well as simple-minded modes of discrimination", and "hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race, although the abstract right to vote may remain unrestricted as to race."

The Amendment has in fact eliminated such "simple-minded" devices as the grandfather clause and the white primary, which were struck down in 1915 and 1944. But to date, the Amendment has not been nearly as successful against more "sophisticated" techniques for disenfranchising Negroes. While, in theory, the Amendment devitalizes these techniques, in fact, they flourish. It is now apparent that its promise is yet to be redeemed, and that Congress must meet the obligation, expressly conferred by the Amendment, to enforce its provisions. The purpose of the Voting Rights Act of 1965 is to meet that obligation.

I. EXISTING VIOLATIONS OF THE FIFTEENTH AMENDMENT

Current voter registration statistics demonstrate that comprehensive implementing legislation is essential to make the Fifteenth Amendment work.

In Alabama, the number of Negroes registered to vote has increased by only 5.2 percent between 1958 and 1964--to a total of 19.4 percent of those eligible. This compares with 69.2 percent of the eligible whites.

In Mississippi, the number of Negroes registered to vote has increased even more slowly. In 1955, about 4.3 percent of the eligible Negroes were registered; today, the approximate figure is 6.4 percent. Meanwhile, in areas for which we have statistics, 80.5 percent of eligible whites are registered.

In Louisiana, Negro registration has scarcely increased at all. In 1956, 31.7 percent of the eligible Negroes were registered. As of January 1, 1965, the figure was 31.8 percent. The current white percentage is 80.2 percent.

The discouraging situation these statistics reflect exists despite the best efforts of four Attorneys General under three Presidents, Republican and Democratic. It exists largely because the judicial process, upon which all existing remedies depend, is institutionally inadequate to deal with practices so deeply rooted in the social and political structure.

I will not burden this Committee again with numerous examples of the use of tests and similar devices which measure only the race of an applicant for registration, not his literacy or anything else.

And I need not describe at length how much time it takes to obtain judicial relief against discrimination, relief which so often proves inadequate. Even after the Department of Justice obtains a judicial decree, a recalcitrant registrar's ability to invent ways to evade the court's command is all too frequently more than equal to the court's capacity to police the state registration process.

By way of example of the delays and difficulties we encounter, let me describe our experience in Dallas County, Alabama, its neighboring counties, and Clarke County in Mississippi.

II. CASE HISTORIES

The Negroes of Dallas County, Alabama, of which Selma is the seat, have been the victims of pervasive and unrelenting voter discrimination since at least 1954. Dallas County has a voting-age population of approximately 29,500, of whom 14,500 are white persons and 15,000 are Negroes. In 1961, 9,195 of the whites--64 percent of the voting-age total--and 156 Negroes--1 percent of the total--were registered to vote in Dallas County. An investigation by the Department of Justice substantiated the discriminatory practices that these statistics, without more, made obvious.

As a consequence, the first voter discrimination case of the Kennedy-Johnson Administration was brought against the Dallas County Board of Registrars on April 13, 1961. When the case finally came to trial 13 months later, we proved discrimination by prior registrars. It was shown, for example, that exactly 14 Negroes had been registered between 1954 and 1960. For whites, registration had been a simple corollary of citizenship. But the court found that the board of registrars then in office was not discriminating and refused to issue an injunction against discrimination.

We appealed. On September 30, 1963, two and one half years after the suit was originally filed, the court of appeals reversed the district court and ordered it to enter an injunction against discriminatory practices. The Department of Justice also had urged the court of appeals to hold that Negro applicants must be judged by standards no different than the lenient ones that had been applied to white applicants during the long period of discrimination--so that the effects of past discrimination would be dissipated.

Our experience has shown that such relief is essential to any meaningful improvement in Negro voter registration in areas where there has been systematic and persistent discrimination. The Court of Appeals for the Fifth Circuit has adopted this view in recent cases, but declined to order this relief in the first Dallas County case. Thus, after two and one half years, the first round of litigation against discrimination in Selma ended substantially in failure.

Two months later, Department personnel inspected and photographed voter registration records at the Dallas County Courthouse. These records showed that the same registrars whom the district court had earlier given a clean bill of health were engaging in blatant discrimination. With a top-heavy majority of whites already registered, standards for applicants of both races had been raised. The percentage of rejections both for white and Negro applicants for registration had more than doubled since the trial in May 1962.

The impact, of course, was greatest on the Negroes, of whom only a handful were registered. Eighty-nine percent of the Negro applications had been rejected between May 1962 and November 1963.

Of the 445 Negro applications rejected, 175 had been filed by Negroes with at least 12 years of education, including 21 with 16 years and one with a master's degree.

In addition to discriminatory grading practices, the registrars also were using one of their most effective indirect methods--delay. Under Alabama law, the registrars meet and process applications on a limited number of days each year. Processing of applications was slowed to a snail's pace. In October 1963, when most of the applicants were Negroes, the average number of persons allowed to fill out forms each registration day was about one-fourth the average in previous years, when most of the applicants were white.

For Negroes to register in Dallas County was thus extremely difficult. In February 1964, it became virtually impossible. Then, all Alabama County Boards of Registrars, including the Dallas County Board in Selma, began using a new application form which included a complicated literacy and knowledge-of-government test.

Since registration is permanent in Alabama, the great majority of white voters in Selma and Dallas County, already registered under easier

standards, did not have to pass the test. But the great majority of voting-age Negroes, unregistered, now faced a still higher obstacle to voting.

Under the new test, the applicant had to demonstrate his ability to spell and understand by writing individual words from the dictation of the registrar. Applicants in Selma were required to spell such difficult and technical words as "emolument", "capitation", "impeachment", "apportionment", and "despotism". The Dallas County registrars also added a refinement not required by the terms of the State-prescribed form. Applicants were required to give a satisfactory interpretation of one of the excerpts of the Constitution printed on the form.

We decided to go back to court. In March 1964, we filed a motion in the original Dallas County case initiating a second full-scale attempt to end discriminatory practices in the registration process in that county.

In September 1964, pending trial of this second proceeding, Alabama registrars, including those in Dallas County, began using another, still more difficult test.

In October 1964, our reopened case came on for trial. We proved that between May 1962, the date of the first trial, and August 1964, 795 Negroes had applied for registration but that only 93 were accepted. During the same period, 1,232 white persons applied for registration, of whom 945 were registered. Thus, less than 12 percent of the Negro applicants but more than 75 percent of the white applicants were accepted.

On February 4, 1965--nearly four years after we first brought suit--the district court entered a second decree. This time, the court substantially accepted our contentions and the relief requested by the Department was granted. The court enjoined use of the complicated literacy and knowledge-of-government tests and entered orders designed to deal with the serious problem of delay.

We hope this most recent decree will be effective, but the Negroes of Dallas County have good reason to be skeptical. After four years of litigation, only 383 Negroes are registered to vote in Dallas County today. The Selma-to-Montgomery march demonstrates that, understandably, the Negroes are tired of waiting.

The story of Selma illustrates a good deal more than discrimination by voting registrars and delays of litigation. It also illustrates another obstacle, sometimes more subtle, certainly more damaging. I am talking about fear.

The Department has filed a series of suits against intimidation of Negro registration applicants by Sheriff James Clark, by his deputies, and by the Dallas County White Citizens Council. These cases involved intimidation, physical violence and baseless arrests and prosecutions. Our appeals against adverse decisions in the first two such cases will be argued tomorrow in the court of appeals.

The story of the areas adjacent to Selma is very similar. East of Selma, in Lowndes County, only one Negro is registered--and he was put

on the rolls only last week. Fifteen other Negro applicants were recently rejected.

South of Selma, in Wilcox County, there were no Negroes registered to vote until a few weeks ago, when a token number were registered. Twenty-nine Negroes applied for registration in 1963. All were rejected. The Department filed a lawsuit on July 19, 1963. On March 31, 1964, the district court entered its decision, finding that the Negro applicants had been rejected "mainly due to their failure to obtain the signature of a qualified voter in Wilcox County to vouch for them. . . ." Unfortunately, the court went on to rule that the voucher requirement was neither "discriminatory nor oppressive as to the Negro applicants"--this in a county where no Negroes were registered. Our appeal was argued last Friday.

Our experiences in Mississippi parallel those in Alabama. On July 6, 1961, the Department filed a complaint seeking an injunction against discriminatory registration practices by the registrar of Clarke County, Mississippi. At that time 76 percent of eligible whites were registered, but not one Negro out of a voting-age population of 2,998 persons.

A year and a half later, on December 26, 1962, the trial began. It was a quick trial and was concluded two days later. The Government's evidence showed that several highly-qualified Negroes, including a school principal, had been denied registration, while illiterate and semi-literate whites had been registered. Negro applicants were sent home to "think" over their applications. White applicants merely had to "sign the book" for themselves and their spouses without any test whatsoever.

On February 5, 1963, the district court rendered judgment for the Government, finding discrimination against Negroes and massive irregularities in the registration of white persons. An injunction was granted. However, the court found that discrimination had not occurred pursuant to a "pattern or practice", a finding which precluded the use of the voting referee provisions of the 1960 Civil Rights Act. The court also refused to require the registration of Negroes whose qualifications were equal to those of whites who had been registered.

The effectiveness of the relief the district court granted can be illustrated by the fact that by August 4, 1964, the percentage of Negroes registered had risen from zero percent of the voting-age population to 2.2 percent--that is, in about three years, 64 Negroes were registered.

Following the Government's appeal, the court of appeals rendered its opinion on February 20, 1964, a year after the district court decision. While the court of appeals modified the judgment below in minor respects, it expressly approved the denial of equalization relief. On petition for rehearing, however, the Court of Appeals modified its prior determination to the extent of holding that the trial court's refusal to find a "pattern or practice" of discrimination was "clearly erroneous" and in the light of that holding remanded the case to the district court.

On December 1, 1964, three and one half years from the start of this action, the district court amended its order, not to find that there had been a pattern or practice of discrimination, but to withdraw its previous ruling on the point and to make no finding at all. The judge again denied equalization relief. The second appeal in this case has followed, nearly four years after the suit was brought.

All of the cases I have discussed thus far have been aimed at discrimination in voting on the county level. The Department has also brought suits designed to bar use of illegal tests and devices statewide. To date, these suits have produced mixed results.

On August 28, 1962, the Department filed a lawsuit against the State of Mississippi, its State Board of Elections, and six county registrars, broadly challenging the validity of a bundle of the State's voter registration laws, including the interpretation test. Nineteen months later, a three-judge district court, one judge dissenting, dismissed the complaint in its entirety. Two weeks ago this decision was reversed in its entirety by the Supreme Court, which remarked that the basis for the lower court's decision on one crucial point was "difficult to take seriously." However, thirty-one months after filing the complaint no trial on the merits has yet been held, and it is difficult to predict how much more time will pass before relief is obtained.

The situation in Louisiana is also discouraging. The Supreme Court recently affirmed the decision of the three-judge federal district court in United States v. Louisiana which held that Louisiana's "constitutional interpretation" test is invalid and, in addition, enjoined the use of Louisiana's recently adopted "citizenship test" in 21 parishes where discrimination has been practiced. But other techniques of discrimination remain available, and much of the force of this decree may be largely dissipated if State and parish officials decide to conduct a reregistration.

One example of the techniques still employed in Louisiana cropped up in East and West Feliciana Parishes. These registrars were among those enjoined in United States v. Louisiana from using certain state-prescribed tests. Contending that they would be subject to prosecution by the state for not applying Louisiana law, a manifestly untenable position under the supremacy clause of the federal constitution, they responded with their ultimate weapon by closing up shop altogether. We asked a single district judge, who had been a dissenting member of the panel which enjoined use of the tests, to order the registrars to resume registration. This judge agreed with the registrars. We appealed immediately and obtained a temporary injunction pending appeal. But meanwhile the rolls had been frozen for over six months.

These examples--and they are but a few of a very large number of similar instances--compel the judgment that existing law is inadequate. Litigation on a case by case basis simply cannot do the job. Preparation of a case is extraordinarily time consuming because the relevant data-- for example, the race of individuals who have actually registered--is frequently most difficult to obtain. Many cases have to be appealed. In almost any other field, once the basic law is enacted by Congress and its constitutionality is upheld, those subject to it, accept it. In this field, however, the battle must be fought again and again in county after county. And even in those jurisdictions where judgment is finally won, local officials intent upon evading the spirit of the law are adept at devising new discriminatory techniques not covered by the letter of the judgment.

In sum, the old means of grappling with the denial of Fifteenth Amendment rights have **failed**. We must try a new approach and new techniques.

S. 1564 is the Administration's answer to the call for new methods. In the place of fruitless legal maneuvering, the bill offers a workable administrative solution and will hasten the day when the basic right of our democracy, the right to vote, is secure against practices of discrimination and inequality.

III. THE PROPOSED VOTING RIGHTS ACT OF 1965

This bill applies to every kind of election, federal, state and local, including primaries. It is designed to deal with the two principal means of frustrating the Fifteenth Amendment: the use of onerous, vague, unfair tests and devices enacted for the purpose of disenfranchising Negroes, and the discriminatory administration of these and other kinds of registration requirements.

The bill accomplishes its objectives first, by outlawing the use of these tests under certain circumstances, and second, by providing for registration by federal officials where necessary to ensure the fair administration of the registration system.

The tests and devices with which the bill deals include the usual literacy, understanding and interpretation tests that are easily susceptible to manipulation, as well as a variety of other repressive schemes. Experience demonstrates that the coincidence of such schemes and low electoral registration or participation is usually the result of racial discrimination in the administration of the election process. Hence, Section 3(a) of the bill provides for a determination by the Attorney General whether any state, or subdivision thereof separately considered, has on November 1, 1964 maintained a test or device as a qualification to vote.

In addition, the Director of the Census determines whether, in the states or subdivisions where the Attorney General ascertains that tests or devices have been used, less than 50 percent of the residents of voting age were registered on November 1, 1964, or less than 50 percent of such persons voted in the Presidential election of November 1964.

The bill provides that whenever positive determinations have been made by the Attorney General and the Director of the Census as to a state, as a whole, or separately as to any subdivision not located in such a state, no person shall be denied the right to vote in any election in such state or separate subdivision because of his failure to comply with a test or device. Inclusion of a separate subdivision of a state which is not totally subject to section 3(a) does not, of course, bring the whole state within the section.

I shall present at the end of my discussion of the bill the information we have as to the areas to be affected by determinations under section 3(a).

The prohibition against tests may be ended in an affected area after it has been free of racial discrimination in the election process for ten years, as found, upon its petition, by a three-judge court in the District of Columbia. This finding will also terminate the examiner procedure provided for in the bill.

However, the Court may not make such a finding as to any State or subdivision for ten years after the entry of a final judgment, whether entered before or after passage of the bill, determining that denials of the right to vote by reason of race or color have occurred anywhere within such state or subdivision.

Because it is now beyond question that recalcitrance and intransigence on the part of State and local officials can defeat the operation of the most unequivocal civil rights legislation, the bill, in Section 4, provides for the appointment of examiners by the Civil Service Commission to carry out registration functions in a political subdivision in which the tests have been suspended pursuant to Section 3(a).

The suspension of tests would not automatically result in the appointment of examiners. For that to happen the Attorney General must certify to the Civil Service Commission under Section 4(a) either (1) that he has received 20 or more meritorious complaints from the residents of a subdivision affected by the determinations referred to in Section 3(a) alleging denial of the right to vote on account of race or color, or (2) that in his judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment in such a political subdivision. Of course, one (but not the only) situation that would fall within Section 4(a)(2) would be the continued use of tests and devices by a local registrar after Section 3(a) takes effect.

It can be readily seen that the bill places a premium on compliance with Section 3(a) and the adoption by state registrars of fair procedures. All that state registration officials need do to avoid the appointment of examiners is to comply with Section 3(a) and not discriminate against Negroes.

After the certification by the Attorney General, the Commission is required to appoint as many examiners as necessary to examine applicants in such area concerning their qualifications to vote. Any person found qualified to vote is to be placed on a list of eligible voters for transmittal to the appropriate local election officials.

Any person whose name appears on the list must be allowed to vote in any subsequent election until such officials are notified that he has been removed from the list as the result of a successful challenge, a failure to vote for three consecutive years, or some other legal ground for loss of eligibility to vote.

The bill provides a procedure for the challenge of persons listed by the examiners, including a hearing by an independent hearing officer and judicial review. A challenged person would be allowed to vote pending final action on the challenge.

The times, places and procedures for application and listing, and for removal from the eligibility list, are to be prescribed by the Civil Service Commission. The Commission, after consultation with the Attorney General, will instruct examiners as to the qualifications applicants must possess. The principal qualifications will be age, citizenship, and residence, and obviously will not include those suspended by the operation of Section 3.

If the State imposes a poll tax as a qualification for voting, the federal examiner is to accept payment and remit it to the appropriate State official. State requirements for payment of cumulative poll taxes for previous years would not be recognized.

Civil injunctive remedies and criminal penalties are specified for violation of various provisions of the bill. Among these provisions is one requiring that no person, whether a state official or otherwise, shall fail or refuse to permit a person whose name appears on the examiner's list to vote, or refuse to count his ballot, or "intimidate, threaten or coerce," a person for voting or attempting to vote under the Act.

An individual who violates this or other prohibitions of the bill may be fined up to \$5,000 or imprisoned up to five years, or both.

It should be noted also that a person harmed by such acts of intimidation by state officials may also sue for damages under 42 U.S.C. 1983, a statute which was enacted in 1871. That statute provides for private civil suits against state officers who subject persons to deprivation of any rights, privileges and immunities secured by the Constitution and laws of the United States. Private individuals who act in concert with State officers could also be sued for damages under that statute, Baldwin v. Morgan, 251 F. 2d 780 (C.A. 5, 1958).

In our view, Section 7 of the bill, which prohibits intimidation of persons voting or attempting to vote under the bill represents a substantial improvement over 42 U. S. C. 1971(b), which now prohibits voting intimidation. Under Section 7 no subjective "purpose" need be shown, in either civil or criminal proceedings, in order to prove intimidation under the proposed bill. Rather, defendants would be deemed to intend the natural consequences of their acts. This variance from the language of Section 1971(b) is intended to avoid the imposition on the government of the very onerous burden of proof of "purpose" which some district courts have--wrongly, I believe--required under the present law.

The bill provides that a person on an eligibility list may allege to an examiner within 24 hours after closing of the polls in an election that he was not permitted to vote, or that his vote was not counted. The examiner, if he believes the allegation well founded, would notify the United States Attorney, who may apply to the District Court for an order enjoining certification of the results of the election.

The Court would be required to issue such an order pending a hearing. If it finds the charge to be true, the Court would provide for the casting or counting of ballots and require their inclusion in the total vote before any candidate may be deemed elected.

The examiner procedure would be terminated in any subdivision whenever the Attorney General notifies the Civil Service Commission that all persons listed have been placed on the subdivision's registration rolls and that there is no longer reasonable cause to believe that persons will be denied the right to vote in such subdivision on account of race or color.

The bill also contains a provision dealing with the problem of attempts by states within its scope to change present voting qualifications. No state or subdivision for which determinations have been made under Section 3(a) will be able to enforce any law imposing qualifications or procedures for voting different from those in force on November 1, 1964, until it obtains a declaratory judgment in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the Fifteenth Amendment.

I turn now to the information we have regarding the impact of Section 3(a). Tests and devices would -- according to our best present information--be prohibited in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia and Alaska, 34 counties in North Carolina, and one county in Arizona, one in Maine, and one in Idaho. Elsewhere, the tests and devices would remain valid, and similarly the registration

system would remain exclusively in the control of state officials.

The premise of Section 3(a), as I have said is that the coincidence of low electoral participation and the use of tests and devices results from racial discrimination in the administration of the tests and devices. That this premise is generally valid is demonstrated by the fact that of the six southern states in which tests and devices would be banned state-wide by Section 3(a), voting discrimination has unquestionably been widespread in all but South Carolina and Virginia, and other forms of racial discrimination, suggestive of voting discrimination, are general in both of those states.

The latter suggestion applies as well to North Carolina, where 34 counties are reached by Section 3(a) and where, indeed, in at least one instance a federal court has acted to correct registration practices which impeded Negro registration.

In view of the premise for Section 3(a), Congress may give sufficient territorial scope to the section to provide a workable and objective system for the enforcement of the Fifteenth Amendment where it is being violated. Those jurisdictions placed within its scope which have not engaged in violations of the Fifteenth Amendment--the states and counties affected by the formula in which it may be doubted that racial discrimination has been practiced--need only demonstrate in court that they have not practiced discrimination within the ten immediately preceding years in order to lift the ban of Section 3(a) from their registration systems.

That is, Section 3(a) in reality reaches on a long-term basis only those areas where racial discrimination in voting in fact exists.

IV. THE CONSTITUTIONALITY OF THE BILL

I have shown why this legislation is necessary and have explained how it would work. It remains to explain why we think it is constitutional.

Far from impinging on constitutional rights--in purpose and effect, the bill implements the explicit command of the Fifteenth Amendment that "the right * * * to vote shall not be denied or abridged * * * by any State on account of race [or] color." The means chosen to achieve that end are appropriate, indeed, necessary. Nothing more is required.

Let me pursue the matter a little. This is not a case where the Congress would be invoking some "inherent", but unexpressed, power. The Constitution itself expressly says in section 2 of the fifteenth article of amendment: "The Congress shall have power to enforce this article by appropriate legislation."

Here, then, we draw on one of the powers expressly delegated by the people and by the states to the national legislature. In this instance, it is the power to eradicate color discrimination affecting the right to vote. Accordingly, as Chief Justice Marshall said in Gibbons v. Ogden, 9 Wheat 1, 196, with respect to another express power--the power to regulate interstate commerce-- "[t]his power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."

That was the constitutional rule in 1824 when those words were first spoken by Chief Justice Marshall. It remains the constitutional rule today; those same words were repeated by Mr. Justice Clark for a unanimous Court just recently in sustaining the public accommodation provisions of the Civil Rights Act of 1964. See Atlanta Motel v. United States, 379 U. S. 241, 255.

This is not a case where the subject matter has been exclusively reserved to another branch of government -- to the Executive or the courts. The Fifteenth Amendment leaves no doubt about the propriety of legislative action. And, of course, both immediately after the passage of the Fifteenth Amendment, and more recently, the Congress has acted to implement the right. See the very comprehensive Act of May 31, 1870, 16 Stat. 140, and the voting provisions of the Civil Rights Acts of 1957, 1960 and 1964.

Some of the early laws were voided as too broad and others were later repealed. But the Supreme Court has never voided a statute limited to enforcement of the Fifteenth Amendment's prohibition against discrimination in voting. On the contrary, in the old cases of United States v. Reese, 92 U. S. 214, 218, and James v. Bowman, 190 U. S. 127, 138-139, the Supreme Court, while invalidating certain statutory provisions, expressly pointed to the power of Congress to protect the right to:

"*** exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'"

And with respect to congressional elections, shortly after the adoption of the Fifteenth Amendment, the Court sustained a system of federal supervisors for registration and voting not dissimilar to the system proposed here. See Ex Parte Siebold, 100 U. S. 371; United States v. Gale, 109 U. S. 65. Constitutional assaults on the more recent legislation have been uniformly rejected. See United States v. Raines, 362 U. S. 17(1957 Act); United States v. Thomas, 362 U. S. 58 (same); Hannah v. Larche,

363 U. S. 420 (Civil Rights Commission rules under 1957 Act); Alabama v. United States, 371 U. S. 37 (1960 Act); United States v. Mississippi, No. 73, this Term, decided March 8, 1965 (same); Louisiana v. United States, No. 67, this Term, decided March 8, 1965 (same).

This legislation has only one aim-- to effectuate at long last the promise of the Fifteenth Amendment -- that there shall be no discrimination on account of race or color with respect to the right to vote. That is the only purpose of the proposed bill. It is, therefore, truly legislation "designed to enforce" the amendment. To meet the test of constitutionality, it remains only to demonstrate that the means suggested are appropriate.

The relevant constitutional rule, again, was established once and for all by Chief Justice Marshall. Speaking for the Court in McCullough v. Maryland, 4 Wheat. 316,421, he said:

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional."

The same rule applies to the powers conferred by the Amendments to the Constitution. In the case of Ex Parte Virginia, 100 U. S. 339, 345-346, speaking of the Thirteenth and Fourteenth Amendments, the Court said:

"Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

See also, Everard's Breweries v. Day, 265 U. S. 545, 558-559, applying the same standard to the enforcement section of the Prohibition (Eighteenth) Amendment.

That is really the end of the matter. The means chosen are certainly not "prohibited" by the Constitution, (as I shall show in a moment) and they are -- as I have already outlined -- "appropriate" and "plainly adapted" to the end of eliminating racial discrimination in voting. It does not matter, constitutionally, that the same result might be achieved in some other way. That has been settled since the beginning and was

expressly re-affirmed very recently in the cases upholding the Civil Rights Act of 1964. See Atlanta Motel v. United States, 379 U. S. 241, 261.

All workable legislation tends to set up categories -- inevitably so. I have explained the premise for the classification made and, with some possible exceptions, as I have said, the facts support the hypothesis. But the exceptional case is provided for in Section 3(c) of the bill which I have already discussed. Given a valid factual premise -- as we have here -- it is for Congress to set the boundaries. That is essentially a legislative function which the courts do not and cannot quibble about. Cf. Boynnton v. Virginia, 364 U. S. 454; Currin v. Wallace, 306 U. S. 1; United States v. Darby, 312 U. S. 100, 121. See, also, Purity Extract Co. v. Lynch, 226 U. S. 192.

The President submits the present proposal only because he deems it imperative to deal in this way with the invidious discrimination that persists despite determined efforts to eradicate the evil by other means. It is only after long experience with lesser means and a discouraging record of obstruction and delay that we resort to more far-reaching solutions.

The Constitution, however, does not even require this much forbearance. When there is clear legislative power to act, the remedy chosen need not be absolutely necessary; it is enough if it be "appropriate." And I am certain that you all recall that the Supreme Court -- in sustaining the finding of the 88th Congress that racial discrimination by a local restaurant serving a substantial amount of out-of-state food adversely affects interstate commerce -- made it clear that so long as there is a "rational basis" for the Congressional finding, the finding itself need not be formally embodied in the statute. Katzenbach v. McClung, 379 U. S. 294, 303-305.

I turn now to the contention often heard that, whatever the power of Congress under the enforcement clause of the Fifteenth Amendment in other respects, it can never be used to infringe on the right of the states to fix qualifications for voting, at least for non-federal elections. The short answer to this argument was given most emphatically by the late Mr. Justice Frankfurter, speaking for the Court in Gomillion v. Lightfoot, 364 U. S. 339, 347, a Fifteenth Amendment case:

"When a State exercises power wholly within the domain of State interest, it is insulated from federal judicial review. But such insulation is not carried over when State power is used as an instrument for circumventing a federally protected right."

The constitutional rule is clear: So long as state laws or practices erecting voting qualifications for non-federal elections do not run afoul of the Fourteenth or Fifteenth Amendments, they stand undisturbed. But when State power is abused--as it plainly is in the areas affected by the present bill--there is no magic in the words "voting qualification."

The "grandfather clauses" of Oklahoma and Maryland were, of course, voting qualifications. Yet they had to bow before the Fifteenth Amendment. Guinn v. United States, 238 U.S. 347; Myers v. Anderson, 238 U.S. 368. Nor are only the most obvious devices reached. As the Court said in Lane v. Wilson, 307 U.S. 268, 275; "The Amendment nullifies sophisticated as well as simple-minded modes of discrimination."

Nor do literacy tests and similar requirements enjoy special immunity. To be sure, in Lassiter v. Northampton Election Board, 360 U.S. 45, the Court found no fault with a literacy requirement, as such, but it added: "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot." Id., 53. See, also, Gray v. Sanders, 372 U.S. 368, 379.

Indeed, as the opinion in Lassiter noted, the Court had earlier affirmed a decision annulling Alabama's literacy test on the ground that it was "merely a device to make racial discrimination easy." 360 U.S. at 53. See Davis v. Schnell, 336 U.S. 933, affirming 81 F. Supp. 872. And, only the other day, the Supreme Court voided one of Louisiana's literacy tests. Louisiana v. United States, No. 67, this Term, decided March 8, 1965. See, also, United States v. Mississippi, supra.

Thus, it is clear that the Constitution will not allow racially discriminatory voting practices to stand. But it is even clearer, as we have seen, that the Constitution invites Congress to do more than stand by and watch the courts invalidate state practices. It invites Congress to take a positive role by outlawing the use of any practices utilized to deny rights under the Fifteenth Amendment.

This bill accepts that invitation.

I understand that it has been suggested that, whether or not the bill is constitutional, a better remedy for existing discrimination would be to guarantee the fair administration of literacy tests rather than to abolish them. I do not think this is so.

The majority of the states -- at least thirty -- find it possible to conduct their elections without any literacy test whatever. There is no evidence that these states have governments inferior to the states which impose -- or purport to impose -- such a requirement.

Whether there is really a valid basis for the use of literacy tests is, therefore, questionable. But it is not for this reason that the proposed legislation would abolish them in certain places.

Rather, we seek to abolish these tests because they have been used in those places as a device to discriminate against Negroes.

Highly literate Negroes have been refused the right to vote while totally illiterate whites have voted freely. In short, in these areas, passing a literacy test is a matter of color, not intellectual capability.

It is not this bill -- it is not the federal government -- which undertakes to eliminate literacy as a requirement for voting in such states or counties. It is the states or counties themselves which have done so, and done so repeatedly, by registering illiterate or barely literate white persons.

The aim of this bill is to insure that the areas which have done so apply the same standard to all persons equally, to Negroes now just as to whites in the past.

It might be suggested that this kind of discrimination could be ended in a different way -- by wiping the registration books clean and requiring all voters, white or Negro, to register anew under a uniformly applied literacy test.

For two reasons such an approach would not solve, but would compound our present problems.

To subject every citizen to a higher literacy standard would, inevitably, work unfairly against Negroes -- Negroes who have for decades been systematically denied educational opportunity equal to that available to the white population. Although the discredited "separate but equal" doctrine had colorable constitutional legitimacy until 1954, the notorious and tragic fact is that educational opportunities were pathetically inferior for thousands of Negroes who want to vote today.

The impact of a general re-registration would produce a real irony. Years of violation of the 14th Amendment right of equal protection through equal education would become the excuse for continuing violation of the 15th Amendment right to vote.

The second argument against such a re-registration "solution" is even more basic -- and even more ironic. Even the fair administration of a new literacy test in the relevant areas would, inevitably, disenfranchise not only many Negroes, but also thousands of illiterate whites who

have voted throughout their adult lives.

Our concern today is to enlarge representative government, to solicit the consent of all the governed. Surely we cannot even purport to act on that concern if, in so doing, we reduce the ballot and correspondingly diminish democracy.

V. CONCLUSION

S. 1564 would effectuate our commitment to the ideals of effective democracy expressed by the President when he addressed Congress last week.

Numerous members of the Senate and House of Representatives have worked hard to produce this bill and it is most encouraging to know that 66 Senators from 37 states have joined in sponsoring it.

This dedication of the President and Members of Congress reflects the nation's firm belief that racial discrimination and democracy are incompatible. The Voting Rights Act of 1965 must therefore be enacted.

I urge that it be enacted promptly.